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UNCLAS SECTION 01 OF 02 PANAMA 002139

SIPDIS

DEPT FOR EB/CIP - AYALA
ALSO FOR WHA/CEN - SCHIFFER

E.O. 12958: N/A

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SUBJECT: NO EVIDENCE OF "WHIPSAWING" BY PANAMANIAN TELCOMS

REF: 177365

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1. (SBU) SUMMARY: Econoff and Econ Specialist delivered reftel points to Jose Galan, Director President of Panama's Public Utilities Regulatory Agency (Ente Regulador) on October 14th. Galan confirmed that circuit blockages by Panamanian telecommunications companies to place price pressure on international carriers ("whipsawing") had not been an issue here thus far. Galan stated that the legal framework governing the telecommunications industry does support a free and fair market. However, the current regulatory and enforcement situation (for all public utilities in Panama) has not yet achieved the level of autonomy and independence required to declare a level playing field. De facto monopoly Cable & Wireless (C&W) continues to dominate both the mobile and fixed line markets and regularly engages in tactics designed to block or undermine competitive threats and regulatory enforcement. 49 percent ownership of C&W by the GOP provides a disincentive to support the Ente Regulador when regulation or penalties might reduce C&W profitability and by extension, GOP revenue. END SUMMARY

TELECOM INDUSTRY STATE OF PLAY

2. (U) The Ente Regulador (ER) estimates 43 percent of Panamanians will have mobile telephones by the end of 2005. Of the 856,000 mobile telephones in Panama, the ER calculates that 86 percent are prepaid and 14 percent are billed. At this time, C&W and Spanish telcom Telefonica Moviles (Movistar) have an exclusive monopoly on the mobile phone market until 2008. Movistar estimates its mobile telephone market penetration at 45 percent with a target of 50 percent by the end of 2005. C&W claims 70 percent of the mobile telephone market, with 800,000 mobile telephone clients. (Comment: As these combined claims exceed 100 percent, Econoff suspects both companies have overestimated their market penetration for media affect. A 60-40 ratio appears more likely at this time. End Comment.)

3. (SBU) For C&W, the main game is not the mobile telephone market which accounts for only 25-30 percent of their total income, but the fixed land line. All fixed wire accounts are held by C&W which claims 327,500 residential and 83,500 commercial accounts. Although the legal monopoly previously held by C&W ended several years ago, the company maintains its de facto monopolistic position through its ownership of the infrastructure. While more than 20 alternate providers are available for international calls, access to these providers is via phone cards or billing code. C&W provides the dial tone and the billing services. Secondly, substantial government ownership gives the GOP a financial interest in the market performance of C&W and a disincentive to support regulatory activity which erodes C&W's profitability and, therefore, the GOP's annual dividend.

C&W TACTICS - SUBTERFUGE AND LAWSUITS

4. (SBU) Galan believes C&W engages in anti-competitive practices making it difficult for new entrants to the market to function effectively. He said their tactics were subtle and specific to the competitive threat such as, failing to show up for meetings, requiring network connection equipment or configurations which may be difficult to obtain or vague in their specifications. As their tactics were different for each situation, it was impossible to establish a regulation to impede this activity. Galan stated that C&W's standard response to regulation and/or punitive action on the part of his agency was to sue the ER in court. At this time, the ER faces 22 suits brought by C&W against his agency. While the regulators do sometimes win a favorable ruling, it may be after several years of legal activity. This often makes the issue obsolete or too late for a fledgling competitor to wait.

5. (SBU) For example, the Ente Regulador was able to establish that C&W for 2 years had changed the definition of a minute to start at 40 seconds and had been billing its customers accordingly. However, the maximum fine the ER can

assess against any public utility is capped at \$1 million USD. The ER estimates that C&W profited from this tactic by \$20 to \$60m. Thus the maximum fine offers little disincentive. The case is still pending court action. The ER wants C&W to rebate the overcharges to its affected customers over time. Ironically, this has the anticompetitive effect of locking existing customers into C&W as only by remaining subscribers would they be able to receive any refund from previous overcharges. Galan would welcome the presence of a large international telecommunications company, including U.S. firms to counter C&W's weight.

16. (U) Galan was unable to meet with Econoff prior to the expiration of the comment period for the FCC Notice of Inquiry. However, Econoff advised Mr. Galan that should he have any comments they would still be forwarded to the appropriate FCC contact on his behalf. Given the absence of "whipsawing" activity here in Panama, Embassy does not anticipate that Panama will comment on this FCC document.

17. (U) Comment: Neither C&W, Movistar or the ER have commented on the impending impact of Voice over IP and appear completely unprepared for this new competitive challenge.
End Comment.
EATON